IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.4039 OF 2006**

Shri.Rajaram Baburao Darekar .. Petitioner.

Versus

Shri.Kabir Hasham Shaikh & Ors. .. Respondents.

Mr.S.M.Sabrad for petitioner.

Mr.P.N.Joshi for respondent Nos.1 to 5.

**CORAM : R.M.SAVANT, J.**

**DATE : 11th June, 2007.**

**P.C.**

1. Rule. By consent of parties made returnable forthwith.

2. Mr.S.M.Sabrad prays for deletion of Article 226 of the Constitution of India mentioned from the cause title of the petition, which is accordingly deleted.

3. This petition filed under Article 227 of the Constitution of India impugns the order dated 27th October, 2005 passed by the Addl.District Judge, Niphad. By the said order, Civil Misc. Appeal No.107 of 2005 filed by the contesting respondents 1 to 5 herein had been allowed.

4. The respondents 1 to 5 are the original plaintiffs in R.C.S. No.91 of 2005 in the Court of Civil Judge (J.D.), Niphad. The said suit was filed for a declaration that the sale deed executed on 24th January, 2005 by the respondent No.7 in favour of the petitioner is illegal and therefore be set aside.

5. In the said suit, an application for grant of temporary injunction came to be filed under Exh.5 restraining the petitioners from causing obstruction and interference to the peaceful possession of the respondent No.1 over

the suit property. The said application, after issuance of notices and filing of the replies, came to be rejected by the Trial Court vide its order dated 18th October, 2005. The Trial Court came to the conclusion that the respondent No.1 was not in actual possession of the suit property.

6. Being aggrieved by the said order dated 18/10/2005, the respondent Nos.1 to 5 filed Misc.Civil Appeal No.107 of 2005, which came to be allowed on 27th March, 2006 by the learned Additional District Judge, Niphad. By the said order, the learned District Judge set aside the order of the Trial Court and granted an injunction restraining the petitioner therein from disturbing the possession of the plaintiffs-respondent Nos.1 to 5 herein came to be passed. One more direction came to be issued was that the suit is expedited.

7. It is significant to note that the Trial Court on the basis of the material produced came to a conclusion that no case for grant of any discretionary relief has been made out by the respondent Nos.1 to 5 herein. However, the Appellate Court on the basis of the material produced before it came to the conclusion that case for grant of temporary injunction has been made out and, therefore, set aside the order of the Trial Court. In the present petition, an order of status-quo passed in August, 2006 has been in operation.

8. In the said circumstances, I am of the view that the interest of justice would be served if without going into the rival contentions, the parties are directed to maintain status-quo pending the said suit. Since the suit is expedited by the impugned order, it would also be necessary to direct the Trial Court to dispose of the suit by 31st March, 2008. This order has

been passed keeping the contentions of both the parties explicitly open. The Trial Court is directed to try and decide the suit on its own merits and being uninfluenced by the order passed by this Court as well as the order dated 18th October, 2005 passed by the Trial Court and the order dated 27th October, 2005 by the lower Appellate Court.

9. Rule is accordingly made absolute with no order as to costs.

**(R.M.SAVANT, J.)**